

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

CARL JAMES CAVINESS	§	PETITIONER
	§	
v.	§	Civil Action No. 1:10cv157-LG-RHW
	§	
JIM HOOD and DALE CASKEY	§	RESPONDENTS

ORDER DENYING MOTION TO ALTER JUDGMENT

BEFORE THE COURT are the Motion for Relief from Judgment [17] and the “Motion to Amend the Findings or for Additional Findings; Motion for a New Trial or to Alter or Amend a Judgment” [19] filed by Carl James Caviness. In his Motions, Caviness argues that this Court improperly failed to consider his objection to Magistrate Judge Walker’s Proposed Findings of Fact and Recommendations and that prison officials interfered with his mail. Upon reviewing Caviness’ Motions and the applicable law, the Court finds that the Motions should be denied.

DISCUSSION

On October 21, 2010, United States Magistrate Judge Robert H. Walker entered Proposed Findings of Fact and Recommendations [13], which recommended that the Respondents’ Motion [10] to Dismiss Caviness’ Petition for Writ of Habeas Corpus be granted and that Caviness’ Motion [12] to Recalculate Sentence be denied, because Caviness’ petition was untimely. The Court never received any objections, and it entered an Order [15] adopting the Proposed Findings and Recommendations on November 19, 2010. On November 30, 2010, Caviness filed a Motion for Relief from Judgment [17] and on December 6, 2010, he filed a Motion to Amend the Findings or for Additional Findings/ Motion for a New Trial or to Alter or Amend a Judgment [19].

Caviness claims that he did not receive the Proposed Findings until October 26, 2010, and that he attempted to mail his objections on November 10, 2010, but prison officials would not permit him to mail them. He claims that he again gave the objections to prison officials on November 12, 2010, but they did not mail them until November 16, 2010. The Court never received the objections. The legal outgoing mail log provided to the Court by Caviness indicates that the objections were sent to an incorrect address. (Ex. A to Mot. [17]).

Because Caviness claims that he attempted to timely mail his objections but was prevented from doing so, the Court will now consider them.¹ Caviness continues to argue that his sentence is illegal. The only argument that Caviness presents that concerns the timeliness of his petition is that, pursuant to Miss. Code Ann. §99-39-5, the three-year time limit for filing a motion for post-conviction relief does not apply where the petitioner claims that his sentence has expired. However, the issue before the Court is whether Caviness' habeas petition was timely filed, not whether his motion for post-conviction relief was timely filed. As Judge Walker explained in his Proposed Findings of Fact and Recommendation, Caviness' petition was clearly untimely, and no motion for post-conviction relief was filed early enough to toll the limitations period pursuant to 28 U.S.C. § 2244(d)(2). As a result, the Court finds that Judge Walker's Proposed Findings of Fact and Recommendations were properly adopted as the opinion of this Court.

¹ The only copy of the objections in the Court record are attached to the defendants' response [18] as Exhibit A.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion for Relief from Judgment [17] and the Motion to Amend the Findings or for Additional Findings/ Motion for a New Trial or to Alter or Amend a Judgment [19] filed by Carl James Caviness are **DENIED**.

SO ORDERED AND ADJUDGED this the 20th day of December, 2010.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.

UNITED STATES DISTRICT JUDGE